

ZACHARY MOSNER, WSBA# 9566
 Assistant Attorney General
 Bankruptcy & Collections Unit
 800 Fifth Avenue, Suite 2000
 Seattle, Washington 98104-3188
 (206) 389-2198

Judge Frank L. Kurtz
 Chapter 11
 Hearing Date: January 20, 2010
 Hearing Time: 10:00 a.m.
 Response Due Date: January 13, 2010
 Hearing Location: Telephonic

**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF WASHINGTON**

In re

JOHN MICHIAL SHUMATE and
 JENNIFER D. SHUMATE,

Debtors.

CASE NO. 09-05078-FLK11

In re

SHUMATE, INC.,

Debtor.

CASE NO. 09-05079-FLK11

In re

SHUMATE TRI-CITY, LLC,

Debtor.

CASE NO. 09-05080-FLK11

In re

SHUMATE SPOKANE, LLC,

Debtor.

CASE NO. 09-05081-FLK11

JOHN MICHIAL SHUMATE and
 JENNIFER D. SHUMATE; SHUMATE,
 INC.; SHUMATE TRI-CITY, LLC dba
 SHUMATE HARLEY-DAVIDSON; and
 SHUMATE SPOKANE, LLC dba
 SHUMATE HARLEY-DAVIDSON,

Plaintiffs,

v.

HARLEY-DAVIDSON MOTOR
 COMPANY, INC.; BUELL
 DISTRIBUTION COMPANY, LLC; and
 HARLEY-DAVIDSON CREDIT CORP.,

Defendants.

ADVERSARY NO. 09-80149-FLK

STATE OF WASHINGTON MOTION
 TO INTERVENE.

COMES NOW counsel for the STATE OF WASHINGTON, Department of Revenue and MOVES TO INTERVENE in the instant proceedings upon the following grounds:

1. Allegations About Conversion of State Trust Funds. The debtors and plaintiffs herein have been engaged in the retail sale of motorcycles and accessories. In relation thereto they are obligated to collect sales tax in trust, that with local options ranges from 8.8 to 9% of the actual sale made.

2. Prior History of Collection and Remittance. The debtors as taxpayers had a history of collecting and remitting these trust fund taxes.

3. Current Sales Tax Balance. The various taxpayer entities owe at this time in excess of \$400,000 in sales tax that was reported but not remitted.

4. Allegations by Debtors. Debtors allege that the secured creditor(s) have been “sweeping” trust funds and applying those proceeds to outstanding debt.

5. Trust Funds Cannot Be Pledged. Trust funds are never “property of the debtor” and as such cannot be pledged. Thus, none of the secured creditors in this case had the legal right, in any manner, to take control of the subject funds.

6. Unknown Amount of Funds Converted. The State would assert that any funds collected by the defendant herein have been converted and could be the subject of a turnover motion or judgment for monies due and owing.

7. Risk of Multiple and Inconsistent Proceedings. Clearly the debtors have made allegations about property belonging solely to the State of Washington. There is the risk that unless the State is permitted to intervene and concurrently adjudicate these issues, there could be multiple and inconsistent proceedings in state and federal court.

8. Limited Role In Adversary Proceeding. The State intervention is leveled solely at protecting and collecting the subject sales tax. It takes no further interest in issues relating to the secured creditor relationship and/or collection actions undertaken other than as related to conversion of trust funds.

WHEREUPON, having so stated, the State of Washington Department of Revenue PRAYS that the court grant leave to intervene and file an answer and make such counter- and cross-claims as will enable the State to protect its interests identified herein.

DATED this 10th day of December, 2009.

ROBERT M. MCKENNA
Attorney General

/s/ Zachary Mosner

ZACHARY MOSNER, WSBA No. 9566
Assistant Attorney General